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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re KENDALL J., A Person Coming Under  
The Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

KENDALL J.,

Defendant and Appellant.

F045085

(Super. Ct. No. 505738)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Stanislaus County. Linda McFadden, Judge.

Thomas M. Marovich, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, and Carlos A. Martinez, Deputy Attorney General, for Plaintiff and Respondent.

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\* Before Buckley, Acting P.J., Wiseman, J., and Dawson, J.

Kendall J. contends the juvenile court erred by not dismissing a robbery allegation at the close of the prosecution's case and for basing its ultimate finding he committed the robbery on insubstantial evidence. (Pen. Code,<sup>1</sup> § 211; Welf. & Inst. Code, § 701.1.) We will affirm.

## **BACKGROUND**

### ***Prior Offense***

In March 2003, Kendall admitted committing a July 2002 robbery. The juvenile court released Kendall to the custody of his father on probation under the condition of serving 60 days in juvenile hall.

### ***Current Offenses***

On October 15, 2003, 17-year-old Kendall was "hanging out" with 19-year-old Miguel Santa Cruz near a Modesto mini-mart parking lot where they found 13-year-old friends Ricky and Ian. Miguel approached first and asked the boys for money. After the boys refused, Miguel bumped into Ricky's chest and emptied both boys' pockets. Miguel took Ricky's keys, wallet, and cell phone. He threw the keys on the ground, looked through the wallet and returned it, and kept the cell phone.

Ricky noticed Kendall about five feet away, laughing and whispering to Miguel. Kendall told Miguel that "it's funny." Ricky and Ian both felt Kendall and Miguel were acting together. According to Ian, Kendall made an unsuccessful attempt to get the cell phone back for Ricky. Kendall never touched Ricky's cell phone.

At some point after Miguel returned the wallet, Kendall reached into Ricky's back pocket and retrieved it. Kendall read Ricky's name on his identification card, told him he knew what school he attended, and threatened that he would remember the information if Ricky went to the police. Both Miguel and Kendall searched Ricky's wallet for money.

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.

Kendall told Ricky to meet him at the same location the next day because he might be able to retrieve the phone for him. Ricky declined to do so, because he believed Kendall was not sincere about giving the phone back as he was laughing during most of the altercation and told Miguel not to give the phone back several times.

Ricky went to a friend's house and called his grandmother to report the incident. Modesto Police Officer John Sanchez and Probation Officer Latisha Leap responded to the mini-mart. Kendall denied any knowledge of the robbery and consented to a search, but became uncooperative and resisted the officers. A fight ensued and Kendall ran away. The officers subsequently found Kendall in a backyard and took him into custody.

Kendall admitted resisting an executive officer (§ 69) and after a dispositional hearing, the juvenile court found Kendall committed robbery (§ 211) and dissuaded a witness by force or threat (§ 136.1). The juvenile court continued Kendall as a ward of the court and released him to the custody of his father after serving 120 days in juvenile hall under a maximum period of confinement of 88 months.

## **DISCUSSION**

At the close of the prosecution's case, defense counsel moved to dismiss the robbery charge for insufficient evidence. (Welf. & Inst. Code, § 701.1.<sup>2</sup>) The prosecutor opposed the motion claiming the evidence demonstrated Kendall aided and abetted Miguel. The court denied the motion and subsequently found sufficient evidence to support the robbery allegation.

Section 701.1 provides the juvenile court with the authority to dismiss a petition after the prosecution's case if the court finds the minor is not a person described under Welfare and Institutions Code sections 601 and 602. The grant of a motion under section 701.1 "recognizes the prosecution has failed to make a prima facie case and is equivalent to a finding on the merits that the allegations charged are untrue." (*In re Anthony H.*

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<sup>2</sup> Further references to section 701.1 are to the Welfare and Institutions Code.

(1982) 138 Cal.App.3d 159, 164.) The juvenile court's section 701.1 determination is reviewed under the familiar substantial evidence standard and is analogous to an acquittal motion under section 1118 in adult nonjury proceedings. (*In re Andre G.* (1989) 210 Cal.App.3d 62, 65-66.) In both instances, the court must "weigh the evidence, evaluate the credibility of witnesses, and determine that the case against the [accused] is 'proved beyond a reasonable doubt before [the accused] is required to put on a defense.'" (*Id.* at p. 66.) So long as the circumstances reasonably justify the juvenile court's findings, we may not reverse the judgment even if we would have made a contrary determination. (*In re George T.* (2004) 33 Cal.4th 620, 631.)

Robbery is the taking of property from the possession of another by means of force or fear. (§ 211.) Kendall does not dispute that Miguel robbed Ricky's cell phone; instead, he claims there was no evidence for the juvenile court to find him liable as an aider and abettor.

" 'All persons concerned in the commission of a crime, ... whether they directly commit the act constituting the offense, or aid and abet in its commission, ... are principals in any crime so committed.' (§ 31.)" (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1122.) To be liable as an aider and abettor, the accused must " 'act with the knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.' " (*Id.* at p. 1123, original emphasis.)

"The intent with which [an] act is done is manifested by the circumstances under which the act is committed." (*People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1380; § 21, subd. (a).) While mere presence at the scene is insufficient to support aiding and abetting liability, it may be considered as a factor tending to show intent. (*People v. Hill* (1998) 17 Cal.4th 800, 851.) Particularly relevant is the conduct of the accused before, during, and after the crime. (*People v. Haynes* (1998) 61 Cal.App.4th 1282, 1294.) The court

may also consider in a robbery case whether the victim was intimidated by the presence of the accused aider and abettor. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5.)

The evidence established that Kendall and Miguel arrived at the mini-mart parking lot together. Kendall was only five feet away when Miguel accosted Ricky. As Kendall approached, he was laughing and stated Miguel's actions were funny, thereby encouraging Miguel to continue. Kendall further assisted Miguel by intimidating Ricky; Kendall removed Ricky's wallet from his back pocket, read Ricky's personal information from his identification card, and threatened the youth by telling him he knew what school he attended and that he would remember his information if he went to the police. Moreover, both Ricky and Ian testified that they believed Miguel and Kendall were acting together.

Kendall's contention the robbery was complete prior to his joining Miguel and Ricky is incorrect. Again, the evidence established Kendall was a mere five feet away when Miguel took Ricky's phone. Further, Ricky was still attempting to get his phone back from Miguel when Kendall approached. A robbery is not complete until the property is carried away to a place of temporary safety or the victim is otherwise deterred from immediately regaining the property. (*People v. Flynn* (2000) 77 Cal.App.4th 766, 771; *People v. Haynes*, *supra*, 61 Cal.App.4th at pp. 1161, 1165, 1169-1170.) Notwithstanding Kendall's laughing and half-hearted attempt to get the phone back on Ricky's behalf, Kendall also threatened Ricky by intimidating him into abandoning his efforts to obtain his cell phone from Miguel.

Examining the record in light of the evidence most favorable to the judgment, we conclude the juvenile court reasonably inferred from Kendall's presence he knew of and shared Miguel's criminal intent and aided, promoted, and encouraged the robbery of Ricky's cell phone. Supported by substantial evidence, both the juvenile court's denial of Kendall's motion to dismiss under section 701.1 and its ultimate finding sustaining the robbery allegation must be affirmed.

## **DISPOSITION**

The judgment is affirmed.